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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/358,280	07/21/1999	STEVEN M. UTTER	MISTY-52064	1354

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/358,280

Applicant(s)

UTTER, STEVEN M.

Examiner

Christopher S. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5, 8, 18, 19, 21, 23, 24 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5, 8, 18, 19, 21, 23, 24 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2006 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Priority

3. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 and/or 121 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

Claims 5, 8, 18, 19, 21, 23, 24 and 26-28 have not been granted the benefit of the earlier filing date.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: all the reference characters shown in the replacement sheet filed on May 24, 2006. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "one-way valve" recited in claims 5, 18 and 24 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

6. Claims 5, 8, 23, 24 and 26-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 5 recites "...and at least one end cap coupled to the first and second ends..." The specification discloses a threaded cap 20 attached to tank 1. The drawings show cap 20 attached to one end of tank 1. The disclosure, as originally filed, fails to disclose or enable one cap being coupled to both the first and second ends of pressurizable container 1.

Claim 5 recites "...a pump apparatus coupled to one of the first and second ends..." The disclosure, as originally filed, teaches the pump being coupled to the threaded end of tank 1, which is the same end that is coupled to the end cap. The disclosure fails to teach the pump having the ability to be coupled to either end of tank 1, or the pump having the capability to be coupled to the tank at the opposite end from that of the end cap.

Claim 24 recites the limitation "...said valve connected to said water conduit..." The disclosure, as originally filed, fails to teach the one way valve 17 connected to the water conduit 8 and/or 9. Rather, the disclosure teaches a one way valve 17 being an element of the pump. See applicant's figure 2.

7. Claims 5, 8, 18, 21, 23 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the restrictive valve" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "means for sealing said inlet" in line 2. It appears to be a double inclusion of the "end cap" recited in claim 5.

Claim 18 recites the limitation “a manual pump” in line 9. It appears to be a double inclusion of the “seal member...reciprocating member...handle...one-way valve” recited in lines 4-8.

Claim 19 recites the limitation “means for delivering fluid as a continuous evaporative mist” in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation “means for pressurizingt” in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation “means for pressurizingt” in line 2. It appears to be a double inclusion of the “seal member...reciprocating member...handle...one-way valve” recited in claim 24 lines 4-8.

Claim Rejections - 35 USC § 103

8. Claims 5, 8, 18, 19, 21, 23, 24, 26, 27 and 28 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (2,853,212) in view of Norman (842,689).

Anderson discloses an apparatus comprising:

a generally cylindrical pressurizable container 10 having an end cap 16;

a pump apparatus 13 comprising a cylindrical housing 14 having a one-way valve 35 and a seal member 18 carried by a reciprocating member 15, and a handle 32;

a water conduit 34 having a restrictive valve (inherent in order to build up the pressure in container 10 and shown by Norman at reference character 8); and

a spray nozzle (column 3, lines 42).

Anderson does not disclose an attachment strap (and arguably a restrictive valve).

Norman discloses an attachment strap 20 and restrictive valve 8. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve of Norman to the device of Anderson to enable buildup of pressure and to control the release of water/solution. Additionally, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the attachment strap of Norman to the device of Anderson to carry the device.

Regarding claim 28, Anderson in view of Norman discloses the limitations of the claimed invention with the exception of the ice and water. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided ice and water to the device of Anderson in view of Norman to spray ice water.

9. Claims 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Anderson (2,853,212).

Cushing discloses an apparatus comprising: a pressurizable container 16; a manual pump 40; a means for delivering fluid (spray nozzle) 20; a means for controlling the emission of evaporative mist (valve) 46; an attachment 26; a means for hands-free directing (clip) 24.

Cushing does not disclose a "seal member ...reciprocating member...handle...one-way valve." Anderson discloses a pump apparatus 13

comprising a cylindrical housing 14 having a one-way valve 35 and a seal member 18 carried by a reciprocating member 15, and a handle 32;

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Anderson to provide a more effective pump as suggested by Anderson starting on column 1, line 27 through column 2, line 21.

10. Claims 5, 8, 23, 24, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Anderson (2,853,212) and Shurnick et al. (4,852,781).

Cushing discloses an apparatus comprising: a pressurizable container 16; a pump 40 for pressurizing the container; a water conduit 18, 51, 72 (a first conduit 72; a second conduit 18, 51); a spray nozzle 20.

Cushing does not disclose a "seal member ...reciprocating member...handle...one-way valve." Anderson discloses a pump apparatus 13 comprising a cylindrical housing 14 having a one-way valve 35 and a seal member 18 carried by a reciprocating member 15, and a handle 32;

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Anderson to provide a more effective pump as suggested by Anderson starting on column 1, line 27 through column 2, line 21.

Cushing does not disclose an attachment strap. Shurnick et al. discloses a means 27 for securing a bottle to a part of a person's body (waist shown in figure 1). It

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would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 26 of Cushing with the means 27 of Shurnick et al. to attach the device of Cushing to a runner.

Regarding claim 28, Cushing in view of Anderson and Shurnick discloses the limitations of the claimed invention with the exception of the ice and water. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided ice and water to the device of Cushing in view of Anderson and Shurnick to spray ice water.

Response to Arguments

11. Applicant's arguments with respect to claims 5, 8, 18, 19, 21, 23, 24 and 26-28 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim
Primary Examiner
Art Unit 3752

CK